Opinion of Circuit Court.

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

No. 461—September Term, 1966.

(Argued May 31, 1967 Decided August 8, 1967.)

Docket No. 31053

UNITED STATES OF AMERICA,

Appellee,

v.

NOEL MAXWELL, WILLIAM ADAMS, JOHN HENRY PURRY, CLARENCE WHITE and LEONARD R. AIKEN,

Appellants.

Before:

WATERMAN, SMITH and KAUFMAN,

Circuit Judges.

Appeal from judgment after trial to the jury in the United States District Court for the Southern District of New York, Charles H. Tenney, *Judge,* convicting Noel Maxwell, John Henry Purry, Clarence White, William Adams and Leonard R. Aiken of conspiracy to violate 21 U.S.C. §§ 173, 174, and in the cases of Maxwell, Purry and White, of substantive violations of those sections. Affirmed.

HARRY C. BATCHELDER, JR., New York, N. Y. (Anthony F. Marra and James J. Sentner, Jr., New York, N. Y., on the brief), *for appellants Maxwell, Adams, Purry and White.*

JAMES J. HANRAHAN, New York, N. Y., *for appellant Aiken.*

DANIEL R. MURDOCK, Asst. U. S. Attorney, Southern District of New York (Robert M. Morgenthau, U. S. Attorney, Robert C. Morvillo, Michael W. Mitchell and Paul B. Galvani, Asst. U. S. Attorneys, on the brief), *for appellee.*

SMITH, *Circuit Judge*:

Noel Maxwell, John Henry Purry, Clarence White, William Adams and Leonard R. Aiken appeal from judgments of conviction entered in the United States District Court for the Southern District of New York after a jury trial before Judge Charles H. Tenney. All five appellants were convicted of conspiring to violate 21 U.S.C. §§ 173, 174; Maxwell, Purry and White were also found guilty of substantive violations of those sections. Adams was sentenced to five years imprisonment; Maxwell, Purry and White received concurrent sentences of six, seven and eight years, respectively; Aiken was fined $15,000 and sentenced to a term of thirteen years imprisonment to run concurrently with an existing twenty-five year sentence. See, *United States* v. *Aiken*, 373 F. 2d 294, 296 (2d Cir. 1967). We have examined the joint and several points raised by appellants, find them to be unpersuasive and, therefore, affirm the convictions.

Appellants assert that the evidence of guilt on the conspiracy count was insufficient in that the government did not bear its burden of proving beyond a reasonable doubt (1) that an overall conspiracy existed; (2) that each appellant was a member of the conspiracy; (3) that each knew all of his alleged co-conspirators, and (4) that each was aware that the cocaine had been illegally imported. This point fails in all respects.

Taking the evidence in the light most favorable to the government, as we must, *United States* v. *Fiorillo*, 376 F. 2d 180 (2d Cir. 1967), the jury could have found that during the years 1956, 1957 and 1958 three seamen, Jesse Colson, Winston Massiah and Mitchell Anfield, purchased large quantities of cocaine from one Rene Hausaff in Valparaiso, Chile. They then transported the cocaine on their ships to New York City where it was carried ashore by longshoremen and subsequently sold to Aiken, to a duo composed of Maxwell and Adams, to a trio formed by Purry, White and one Nick Holiday or to others.

The evidence which inculpated appellants on the conspiracy and substantive counts may be condensed as follows. On June 18, 1956, Colson brought in some cocaine and met a colleague named Granville Smith who took Colson to Purry's apartment where he introduced him to Purry. Purry, in turn, introduced Colson to White and Holiday. The men conversed and White, Purry and Holiday agreed to cut and distribute cocaine to be imported by Colson and Smith. The three agreed further to furnish Colson with money before his ship sailed. Colson landed again on July 31, 1956 and complained to Smith and Purry about not having received the promised funds but later delivered a quantity of cocaine to Smith in Purry's presence. Colson subsequently took back half of the cocaine

because of non-payment, sold it to Maxwell for $12,000 but, at Massiah's request and in the presence of Adams, paid back $300 because the weight was short. Thereupon, Maxwell, pleased with Colson's way of doing business, asked to be notified of the next shipment. In August of 1956, Colson and Anfield met with Purry, White and Holiday; Purry suggested that they not deal with Smith any more because he had defalcated with their funds, Colson agreed and Purry asked to be informed of the next shipment.

Later in August, Purry, White and Holiday agreed to purchase $600 worth of cocaine through Massiah but failed to deliver the cash before Massiah's ship sailed. When Massiah returned in early October, he sold cocaine to Maxwell and Adams. Massiah subsequently stated that he had been robbed and Maxwell, Adams, White and Purry, among others, unsuccessfully attempted to recover the supposedly stolen cocaine. On October 30 Colson and Anfield sailed carrying with them $600 from Purry, White and Holiday. Upon the ship's return on December 10, Colson delivered cocaine to the trio and sold Maxwell and Adams $16,000 to $18,000 worth of cocaine. Early in 1957 and later in June of that year sales of more cocaine to Purry, White and Holiday and to Maxwell and Adams occurred and were financed in the same way with the trio paying in advance and the duo paying on receipt. In July of 1957 Maxwell and Adams made a $2,500 purchase and a similar sale occurred later that summer. At that time Colson gave Purry, White and Holiday cocaine on consignment but when payment was not forthcoming, Colson retrieved the cocaine.

Toward the end of 1957, Colson informed Aiken that he received shipments of cocaine and Aiken told Colson to have one Schoolboy Ellis contact him when a shipment arrived. Colson subsequently sold Aiken $2,500 worth of

cocaine. Later on, in the fall of 1958, Aiken purchased a quantity of cocaine for $12,500 and, at the same time Colson made further sales to Maxwell and Adams. That same year, Colson made a sale to Aiken at a reduced price because a prior delivery had been defective. Further proof of at least two more sales to Aiken was adduced.

As the above-described evidence demonstrates, appellants' attack on the sufficiency of the evidence is unavailing. The jury was clearly entitled to find a single conspiracy with Colson, Massiah and Anfield supplying cocaine from the same source in Chile for sale and distribution by appellants in New York City. Moreover, as detailed above, the government submitted adequate proof of Purry and White's substantive violations on June 18, 1956 and Maxwell's similar offense on July 31, 1956. The government's proof, furthermore, showed numerous sales to each appellant and thus secured each man to the conspiracy. Compare *United States* v. *Stromberg*, 268 F. 2d 256, 267 (2d Cir.), cert. denied 361 U. S. 863 (1959). Thirdly, it is irrelevant that each appellant did not know all of his alleged co-conspirators. *United States* v. *Edwards*, 366 F. 2d 853, 867 (2d Cir. 1966), cert. denied sub nom. *Parness* v. *United States*, 386 U. S. 919 (1967). Lastly, regardless of the evidence of actual knowledge by appellants that the cocaine came from Chile, possession of cocaine coupled with the permissible inference of §§ 173, 174 is adequate evidence of knowing illegal importation. *United States* v. *Tucker* (2d Cir. June 28, 1967).

Maxwell, Purry, White and Adams contend principally that they were denied their Sixth Amendment right to a speedy trial. Appellants were indicted with seven others[1]

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[1] Winston Massiah, Jesse Colson, Mitchell Anfield, Granville Smith, Nick Holiday, Icky Thorn and Sylvia Ferris. Aiken was

on March 3, 1961. The five appellants, along with three of their co-indictees (Massiah, Anfield and Thorn) were forthwith brought to trial on June 13, 1961 before Judge J. Skelly Wright, sitting by designation, and a jury. The next day, however, Judge Wright declared a mistrial and on June 15 granted the government's motion to sever Maxwell, Purry, White and Adams. Trial commenced as to Aiken, Massiah, Anfield and Thorn, and on June 29 a jury found all four defendants guilty. We reversed the convictions of Aiken, Anfield and Thorn in *United States* v. *Massiah*, 307 F. 2d 62 (2d Cir. 1962), and the Supreme Court reversed Massiah's conviction in the noted decision, *Massiah* v. *United States*. 377 U. S. 201 (1964). Almost five years after Judge Wright declared the mistrial, Maxwell, Purry and Adams moved on June 3, 1966 to dismiss the indictment for want of prosecution. Judge William B. Herlands denied their motion on June 20 and appellants were subsequently brought to trial before Judge Tenney and a jury on October 17, 1966.

Maxwell, Purry, White and Adams lack standing to claim that the longer than five year delay between mistrial and retrial deprived them of a speedy trial. Since none of these appellants ever demanded a speedy trial, each has waived this Sixth Amendment right. *United States* v. *Lustman*, 258 F. 2d 475 (2d Cir.), cert. denied 358 U. S. 880 (1958). Even were we to treat the June 3, 1966 motion to dismiss made by Maxwell, Purry and Adams as a demand for a speedy trial, which we do not, it would not avail these appellants, because they were speedily tried thereafter.

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indicted as "John Doe, a/k/a 'Leon,' meaning thereby to describe a Negro male, of medium complexion, with black hair and a medium build, approximately 40 years old, approximately 5' 9" tall and weighing approximately 165 lbs."

Aware that their claims are barred under *Lustman*, appellants invite us to abandon the so-called demand rule which we have consistently applied in a constantly lengthening line of cases.[2] We decline the invitation, however, because the reasoning of *Lustman*, that the demand rule is consonant with the bulk of federal authority and preserves the speedy trial right as a shield for the defendant's protection but not as a sword for his escape, is still to us persuasive.

Maxwell and Aiken next claim that the admission of the government's exhibit 87, which was a typewritten transcript of an incriminating conversation between Maxwell and Colson, violated their rights under the due process clause of the Fifth Amendment. The background of exhibit 87 is as follows. On March 5, 1960, Customs Agent Finbarr Murphy installed a minifon recorder in the glove compartment of Colson's automobile; Colson then picked up Maxwell and recorded a forty-five minute conversation which the two men had. Murphy subsequently removed the recorder, listened to the conversation and stored the recorder in his locker. In March or April of 1960 he made a conventional tape from the more expensive minifon wire.

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[2] *Chapman* v. *United States* 2d Cir. April 21, 1967); *United States* v. *Moore*, 373 F. 2d 547 (2d Cir. 1967); *United States* v. *Beigel*, 370 F. 2d 751 (2d Cir. 1967); *United States* v. *Aadal*, 368 F. 2d 962 (2d Cir. 1966), cert. denied 386 U. S. 970 (1967); *United States* v. *Smalls*, 363 F. 2d 417 (2d Cir. 1966), cert. denied 385 U. S. 995 (1966); *United States* v. *Sanchez*, 361 F. 2d 824 (2d Cir. 1966); *United States* v. *Lopez*, 355 F. 2d 250 (2d Cir.), cert. denied 384 U. S. 1013 (1966); *United States* v. *Kelly*, 349 F. 2d 720, 768 (2d Cir. 1965), cert. denied 384 U. S. 947 (1966); *United States* v. *Haller*, 333 F. 2d 827 (2d Cir.), cert. denied 379 U. S. 921 (1964); *United States* v. *Wai Lau*, 329 F. 2d 310 (2d Cir.), cert. denied 379 U. S. 856 (1964); *United States* v. *Lester*, 328 F. 2d 971 (2d Cir. 1964); *United States* v. *Kaufman*, 311 F. 2d 695 (2d Cir. 1961), cert. denied 369 U. S. 803 (1962); *United States* v. *Van Allen*, 228 F. 2d 825 (2d Cir.), cert. denied 368 U. S. 836 (1961).

On November 30, 1960, while listening to the re-recording through earphones, Murphy dictated approximately ten minutes of the forty-five minute conversation to a shorthand stenographer whose notes were typed. Murphy then compared the transcript with the re-recording and was satisfied that the transcription was accurate. The portions deleted were either irrelevant, inaudible or repetitive. In July 1961, under the impression that there would not be a re-trial, Murphy put the minifon wire and the re-recording back into circulation where, in the normal course of affairs, the conversations were erased when the wire and tape were re-used.

At the voir dire, Maxwell, objected to the admission of the transcript because the recording was made in violation of his right to counsel. He does not press this point on appeal. In any event, it is meritless. See, *United States ex rel. Molinas* v. *Mancusi*, 370 F. 2d 601 (2d Cir.), cert. denied 386 U. S. 984 (1967), and cases cited therein. What Maxwell does argue is that the accuracy of the transcript cannot be ascertained and that whether the transcript honestly reflects the tenor of the whole conversation cannot be determined. The deletion of the inaudible, irrelevant and repetitive portions of a tape, however, does not render it inadmissible. *United States* v. *Knohl* (2d Cir. June 22, 1967) at 2602.

The accuracy of the transcript presents a best evidence question. We recently said in *Knohl*, "as far as the best evidence rule is concerned, a well recognized exception is that secondary evidence may be admitted in lieu of the original provided the original has not been lost, destroyed or become unavailable through the fault of the proponent and provided the copy does not otherwise appear to be untrustworthy." Here, although the transcript was typed from shorthand notes dictated by Murphy while listening

to the re-recording and was thus susceptible to many inaccuracies, Murphy testified that the transcript accurately represented the re-recording which itself is not challenged. Hence, Judge Tenney was warranted in finding that untrustworthiness had not been shown and the question remains of whether "the original has . . . been lost, destroyed or become unavailable through the fault of the proponent." The tapes were erased by the government; nevertheless, secondary evidence is admissible unless the loss, destruction or unavailability was purposefully caused by the proponent in order to prevent the production of the primary evidence.[3] Here, Murphy stated that he returned the tapes to circulation where they were erased because he did not

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[3] Courts, commentators and codifiers have expressed this rubric in various ways. E.g., *Sylvania Elec. Prods. Inc.* v. *Flanagan*, 352 F. 2d 1005, 1008 (1st Cir. 1965); *United States* v. *Alexander*, 326 F 2d 736, 739 (4th Cir. 1964); McCormick, Evidence § 196 (1954) (serious fault of the proponent); *Tallo* v. *United States*, 344 F. 2d 467, 470 (1st Cir. 1965) (wrongful disposition); *Chandler* v. *United States*, 318 F. 2d CER (10th Cir. 1963) (fraudulent purpose involved in the destruction); *Toho Dussan Kaisha, Ltd.* v. *American President Lines*, 265 F. 2d 418, 423 (2d Cir. 1959) (connivance of the proponent); *United States* v. *O'Connor*, 237 F. 2d 466, 475 (2d Cir. 1956) (destroyed . . . with fraudulent design); *Watson* v. *United States*, 224 F. 2d 910, 912 (5th Cir. 1955) (without any fraudulent purpose or any intent to create an excuse for its nonproduction); *Reynolds* v. *Denver & Rio Grande Western R.R.*, 174 F. 2d 673, 675 (10th Cir. 1949) (fraud or bad faith with regard to the destruction); *Sellmayer Packing Co.* v. *Commissioner*, 146 F. 2d 707, 710 (4th Cir. 1944) (no reasonable probability that it has been designedly withheld or suppressed); McCormick, Evidence §201 (1954) at 414 (if the original document has been destroyed by the person who offers evidence of its contents, the evidence is not admissible unless such person, by showing that such destruction was accidental or was done in good faith, without intention to prevent its use as evidence, rebuts to the satisgaction of the trial judge, any infrecene of fraul); 4 Wigmore, Evidence §1198 at 356 (1940) (proponent first removes . . . any reasonable supicion of fraud); Model Code of Evidence, Rule 602 (culpable negligence or wrongdoining of the proponent). Regardless of the particular formulation, it is agreed that secondary evidence is admissible even though the proponent is responsible for the unavailability of the primary evidence except where the unavailability is caused by the proponent's purposeful design production of the primary evidence.

think that a re-trial would occur in which they would be used. Thus although we regret the government's conduct in not supervising their handling more carefully and allowing the tapes to be erased while charges against Maxwell were outstanding, it was within Judge Tenney's discretion to admit exhibit 87.

Even if the admission of the exhibit were erroneous, which it is not, Maxwell would not be entitled to relief for two reasons upon which we need not rely. First, he received a concurrent sentence for the conspiracy count on which the tapes were admittde. See, *United States* v. *Lawn*, 355 U. S. 339, 359, 362 (1958); *United States* v. *Costello* (2d Cir. 1967); *United States* v. *Gonzalez* (2d Cir. June 22, 1967) (mandatory minimum sentences). See also, *United States* v. *Youngblood* (2d Cir. June 21, 1967). Secondly, Colson testified at trial as to the substance of the taped conversation. See, *Monroe* v. *United States*, 234 F. 2d 49, 55 (D. C. Cir.), cert. denied 352 U. S. 873 (1956). Cf. *United States* v. *White*, 223 F. 2d 674 (2d Cir. 1955). Finally, the transcript did not refer to Aiken and was admitted only against Maxwell; hence, Aiken's claim is frivolous.

Aiken further argues that certain in-custody statements which he made to Agent Murphy after he had been arrested and informed of his rights were admitted in violation of the rules laid down in *Massiah* v. *United States*, 377 U. S. 201 (1964) and *Escobedo* v. *Illinois*, 378 U. S. 478 (1964). At trial, Agent Murphy gave the following account of the conversation, which Aiken does not challenge:

> "I pulled up in front of the House of Detention and I told Aiken to get out, and he said wait a minute, and I said 'What do you want?'

He said, 'If you get any stuff you want to get rid of, call me.'

I said, 'What?'

He said, 'If you get any stuff you want to get rid of, call me, you can trust me.'

I said to Aiken, 'Trust you? I never seen you before last night.'

And he repeated, 'You can trust me.'

So I said, 'Do you have any references?'

He says, 'I have no references. I don't do business that way. Either you do it with me or you don't.'

At that point I told him to get out and the conversation was terminated."

Since Agent Murphy's unchallenged testimony reveals that Aiken freely volunteered the remarks, neither *Massiah* nor *Escobedo* has been violated. *United States* v. *Accardi*, 342 F. 2d 697, 701 (2d Cir.), cert. denied 382 U. S. 954 (1965). Cf. *United States* v. *Garcia* (2d Cir. May 22, 1967).

Aiken complains that he was denied trial by an impartial jury because a juror communicated to the court some denigrating matter about one of appellant's trial lawyers. After determining in the absence of appellant and counsel that the juror had not discussed the matter with the rest of the panel, Judge Tenney excused the juror and replaced him with an alternate. In following this procedure and in replacing the juror with an alternate, Judge Tenney acted well within his powers and, *absent a showing by appellant, we will not presume prejudice in such matters. United States* v. *Ellenbogen*, 365 F. 2d 982, 989 (2d Cir. 1966), cert. denied 386 U. S. 923 (1967); *United States* v. *Houlihan*, 332 F. 2d 8, 13 (2d Cir.), cert. denied 379 U. S. 828 (1964); *United States* v. *Woodner*, 317 F. 2d 649, 652 (2d Cir. 1963).

Aiken goes on to make two complaints about Judge Tenney's charge. These points are improperly presented for appellate review because Aiken failed to assert a timely exception below, *United States* v. *Indiviglio*, 352 F. 2d 276 (2d Cir. 1965), cert. denied 383 U. S. 907 (1966), and, anyway, are trivial. Aiken complains that "The Court in its charge did not spell out for the Jury that were the Jury to find that there were separate independent conspiracies with separate and distinct groups involved and that some of the defendants belonged to one conspiracy and not to the other and that other defendants belong to another conspiracy, then a verdict of not guilty must be returned to all the defendants in the conspiracy count." In fact, the Court correctly charged that "Proof of several separate and independent conspiracies involving various of the defendants, although to violate the same narcotic laws, is not proof of the single conspiracy charged in the indictment." *United States* v. *Aiken, supra.* Aiken's second point is that the charge did not adequately explain the permissive inference of §§ 173 and 174. Although the court might have stated more specifically that the inference is only permissive, failure to do so is not plain error noticeable under Fed. R. Crim. P. 52(b), especially when knowing importation is not in issue. *United States* v. *Morton* (2d Cir. May 8, 1967).

Aiken's next-to-last point is that in identifying a photograph of Aiken, Agent Murphy read off an inscription on the rear which referred to Aiken as a federal fugitive. Although this reference was unfortunate, it is unimaginable that, in light of the overwhelming evidence of guilt, it could have in any way prejudiced Aiken. Cf. *United States* v. *Gillette* (2d Cir.) (fingerprint cards). In any event, Aiken did not request the court to admonish the jury to disregard the remark.

The final point made by Aiken, which concerns alleged prosecutorial misconduct in regard to the Assistant United States Attorney's opening and closing remarks, is likewise without merit. The prosecutor's prediction in his opening statement that the government would show shootings, cheatings and robberies was substantiated at trial, cf. *United States* v. *Moran*, 194 F. 2d 623 (2d Cir.), cert. denied 343 U. S. 965 (1952), and his summation coolly detailed the evidence and cannot even be described as demonstrating "lack of the restraint which more competent prosecutors are careful to display." *United States* v. *Murphy*, 374 F. 2d 651, 653 (2d Cir. 1967). Compare, *United States* v. *Bugros*, 304 F. 2d 177 (2d Cir. 1962).

Aiken makes other arguments but they are too frivolous to warant discussion.

Judgment affirmed.

Petition for Rehearing.

UNITED STATES COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentieth day of September, one thousand nine hundred and sixty-seven.

Present: HON. STERRY R. WATERMAN,
HON. J. JOSEPH SMITH,
HON. IRVING R. KAUFMAN,
Circuit Judges.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

WINSTON MASSIAH, ET AL.,
Defendants,

NOEL MAXWELL, WILLIAM ADAMS, JOHN HENRY PURRY, CLARENCE WHITE and LEONARD ROYAL AIKEN,
Defendants-Appellants.

A petition for rehearing together with a motion in the alternative to stay the issuance of the mandate and continue bail pending a petition for a writ of certiorari to the Supreme Court of the United States having been filed herein by counsel for the appellant Leonard Royal Aiken,

Upon consideration thereof, it is

Ordered that said petition for rehearing and motion be and they hereby are denied.

A. DANIEL FUSARO,
Clerk.

Indictment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Cr. 206.

UNITED STATES OF AMERICA,

—v—

WINSTON MASSIAH, JESSE COLSON, MITCHELL ANFIELD, GRANVILLE SMITH, NOEL MAXWELL, WILLIAM ADAMS, JOHN HENRY PURRY, CLARENCE WHITE, NICK HOLIDAY, ICKY THORN, SYLVIA FERRIS, JOHN DOE, a/k/a "LEON" meaning thereby to describe a Negro male of medium complexion, with black hair and a medium build, approx. 40 yrs. old, approx. 5' 9" tall, and weighing approx. 165 lbs.,

Defendants.

The Grand Jury charges:

On or about the 6th day of May, 1958, in the Southern District of New York, Winston Massiah, Jesse Colson and Mitchell Anfield, the defendants, did unlawfully, wilfully and knowingly bring on board, and have in their possession and control on board a vessel of the United States, to wit, the S.S. Santa Maria, while engaged on a foreign voyage, a narcotic drug, to wit, approximately 3 pounds, 8 ounces and 256 grains of cocaine, not constituting a part of the cargo entered in the manifest or part of the ship's stores.

(Title 21, United States Code, Section 184a and Title 18, United States Code, Section 2).

SECOND COUNT

The Grand Jury further charges:

On or about the 6th day of May, 1958, in the Southern District of New York, Winston Massiah, Jesse Colson and Mitchell Anfield, the defendants, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 3 pounds, 8 ounces and 256 grains of cocaine, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code).
(Title 18, Section 2, United States Code).

THIRD COUNT

The Grand Jury further charges:

On or about the 18th day of June, 1956, in the Southern District of New York, Granville Smith, the defendant, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 50 grams of cocaine, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the

United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code).

FOURTH COUNT

The Grand Jury further charges:

On or about the 18th day of June, 1956, in the Southern District of New York,

JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY,

the defendants, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 50 grams of cocaine, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code).

FIFTH COUNT

The Grand Jury further charges:

On or about the 31st day of July, 1956, in the Southern District of New York, Granville Smith, the defendant, unlawfully, wilfully and knowingly did receive, conceal, sell

and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 25 grams of cocaine, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code).

SIXTH COUNT

The Grand Jury further charges:

On or about the 31st day of July, 1956, in the Southern District of New York,

NOEL MAXWELL,

the defendant, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 25 grams of cocaine, after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code).

SEVENTH COUNT

The Grand Jury further charges:

On or about the 6th day of May, 1958, in the Southern District of New York, Winston Massiah, Jesse Colson and Sylvia Ferris, the defendants, unlawfully, wilfully and knowingly did purchase, possess, dispense and distribute a certain narcotic drug, to wit, approximately 3 pounds, 8 ounces and 256 grains of cocaine, in that the said defendants did not purchase, possess, dispense and distribute said narcotic drug in or from the original stamped package.

(Title 26, Sections 4701, 4703, 4704(a), 4771(a) and 7237(a), United States Code).

EIGHTH COUNT

The Grand Jury further charges:

1. From on or about the 1st day of January, 1956, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, WINSTON MASSIAH, JESSE COLSON, MITCHELL ANFIELD, GRANVILLE SMITH, NOEL MAXWELL, WILLIAM ADAMS, JOHN HENRY PURRY, CLARENCE WHITE, NICK HOLIDAY, ICKY THORN, SYLVIA FERRIS, and JOHN DOE, a/k/a "LEON", meaning thereby to describe a Negro male, of medium complexion, with black hair and a medium build, approximately 40 years old, approximately 5'9" tall and weighing approximately 165 lbs., the defendants, and Fadul Rene Harb Huasaff, Richard Roe, a/k/a "Rene", meaning thereby to describe a Caucasian male, of a light complexion with dark hair and a medium build, 35 to 45 years old, approximately 5'5" tall and weighing approximately 165 lbs., Amanda Huasaff, Helen Hoe, meaning thereby to describe the sister of Amanda Huasaff, a Caucasian female

of a light complexion with dark hair and a medium build, approximately 53 years old, approximately 5'5" tall and weighing approximately 135 lbs., Paul King, James Barber, James Hunter, James Billips, Tony Gumbs, Joe Perry, Gerald Youngblood, Clyde Cadogan, Paul Washington, Sonny Campbell, Arthur Conquist, Harold Hoe, meaning thereby to describe the brother-in-law of Amanda Huasaff, a Caucasian male, of light complexion with black hair and a medium build, approximately 55 years old, approximately 5'5" tall and weighing approximately 160 lbs., and George Goe, a/k/a "Canales", meaning thereby to describe a Caucasion male with an olive complexion, with dark hair and a medium build, 35 to 45 years old, approximately 5'8" tall and weighing approximately 150 lbs., named as co-conspirators but not as defendants, and divers other persons to the Grand Jury unknown, did unlawfully, wilfully and knowingly combine, confederate, conspire and agree together and with each other to commit certain offenses against the United States, to wit, to violate Sections 173 and 174 of Title 21, United States Code.

2. It was a part of said conspiracy that the above-mentioned defendants, and their co-conspirators, would unlawfully, wilfully and knowingly import and bring narcotic drugs, to wit, cocaine, into the United States, in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further a part of said conspiracy that the above-mentioned defendants, and their co-conspirators, would unlawfully, wilfully and knowingly receive, conceal, buy, sell and facilitate the transportation, concealment and sale of narcotic drugs, to wit, cocaine, the exact amount thereof being to the Grand Jury unknown, after said narcotic drugs had been imported and brought into the United States contrary to law, and knowing that said narcotic

drugs had been imported and brought into the United States contrary to law, in violation of Sections 173 and 174 of Title 21, United States Code.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about June 18, 1956, the defendants GRANVILLE SMITH, JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY, had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, New York.

2. On or about July 31, 1956, the defendants GRANVILLE SMITH, WINSTON MASSIAH and JOHN HENRY PURRY had a conversation in a bar at 10th Avenue and 17th Street, New York, New York.

3. On or about July 31, 1956, defendant WINSTON MASSIAH had a conversation with co-conspirator James Barber aboard the vessel S. S. Santa Luisa.

4. On or about July 31, 1956, defendants NOEL MAXWELL and WINSTON MASSIAH had a conversation at 19 West 128th Street, New York, New York.

5. On or about July 31, 1956 defendants NOEL MAXWELL, WILLIAM ADAMS and WINSTON MASSIAH had a conversation at 19 West 128th Street, New York, New York.

6. In or about the month of August, 1956 defendants MITCHELL ANFIELD, JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY had a conversation in a building in the

vicinity of 100th Street and Manhattan Avenue, New York, New York.

7. On or about October 8, 1956 defendants NOEL MAXWELL, WILLIAM ADAMS and WINSTON MASSIAH had conversation at 19 West 128th Street, New York, New York.

8. On or about October 10, 1956 defendants NOEL MAXWELL, WILLIAM ADAMS, MITCHELL ANFIELD and WINSTON MASSIAH had a conversation at 19 West 128th Street, New York, New York.

9. On or about October 11, 1956 defendants JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, New York.

10. On or about October 11, 1956 defendants CLARENCE WHITE, WINSTON MASSIAH and NICK HOLIDAY had a conversation at 19 West 128th Street, New York, New York.

11. On or about December 10, 1956 defendants JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, New York.

12. On or about December 10, 1956 co-conspirator James Hunter went to the vicinity of 8th Avenue and 16th Street, New York, New York.

13. On or about December 10, 1956 defendants MITCHELL ANFIELD, JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, N. Y.

14. On or about June 4, 1957 co-conspirator James Barber went to a bar in the vicinity of 8th Avenue and 16th Street, New York, New York.

15. On or about July 17, 1957 co-conspirator James Hunter went to a bar in the vicinity of 8th Avenue and 16th Street, New York, New York.

16. On or about July 31, 1956 co-conspirator James Barber went to the vicinity of 8th Avenue and 16th Street, New York, New York.

17. On or about August 26, 1957 co-conspirator James Hunter went to the vicinity of 8th Avenue and 16th Street, New York, New York.

18. On or about November 18, 1957 co-conspirator James Billips went to the vicinity of 17th Street and 9th Avenue, New York, New York.

19. On or about December 30, 1957 co-conspirator James Billips went to the vicinity of 9th Avenue and 17th Street, New York, New York.

20. On or about February 10, 1958 co-conspirator James Billips went to a bar in the vicinity of 9th Avenue and 17th Street, New York, New York.

21. On or about May 6, 1958 defendant WINSTON MASSIAH was in possession and control of a quantity of adhesive tape aboard the vessel S.S. Santa Maria.

(Title 21, United States Code, Sections 173 and 174).

MORTON S. ROBSON
United States Attorney

JOHN BUMPE
Foreman

Judgment.

On this 5th day of January, 1967 came the attorney for the government and the defendant appeared in person and by counsel

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly conspiring to import and bring narcotic drugs, to wit, cocaine, into the United States, in violation of Sections 173 and 174 of Title 21, United States Code (Title 21, United States Code, Sections 173 and 174), as charged in count eight—AND—the defendant Leonard Royal Aiken, indicted as John Doe, a/k/a "Leon", duly represented by counsel, having admitted he is the same person previously convicted on ONE separate Federal Narcotics Violations,

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced,

and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THIRTEEN (13) YEARS and FINED $15,000. The fine is to be paid or the defendant is to stand committed until the fine is paid or he is otherwise discharged according to law (Count 8).

This sentence is to run concurrently with the sentence imposed by the Honorable John M. Cannella on August 10, 1966 on indictment 64 Cr 1111.

Judgment.

Bail pending appeal is fixed in the sum of $100,000.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

CHARLES T. TENNEY,
United States District Judge.

JOHN J. OLEUR, JR.,
Clerk.

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required. [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] ffnter any order with respect to suspension and probation. [6] For use of Court wishing to recommend a particular institution.